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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ADAM GADAHN,  
a.k.a. Azzam al-Amriki,  
  
Defendant.

No. SA CR 05-254(A)-UA

GOVERNMENT'S EX PARTE APPLICATION  
FOR LEAVE OF THE COURT TO DISMISS  
INITIAL AND FIRST SUPERSEDING  
INDICTMENTS WITHOUT PREJUDICE  
PURSUANT TO FED. R. CRIM. P. 48(a)

Plaintiff, United States of America, by and through its counsel of record, the United States Attorney for the Central District of California, hereby brings this ex parte application for leave of the Court to dismiss the Initial and First Superseding Indictments in this case without prejudice, pursuant to Federal Rule of Criminal Procedure 48(a).

This application is based upon the attached memorandum of points  
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1 and authorities, the files and records in this case, and any such  
2 additional evidence or argument as may be presented at any hearing on  
3 this application.

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5 Dated: August 28, 2015 Respectfully submitted,

6 EILEEN M. DECKER  
7 United States Attorney

8 PATRICIA A. DONAHUE  
9 Assistant United States Attorney  
Chief, National Security Division

10 CHRISTOPHER D. GRIGG  
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14 DEIRDRE Z. ELIOT  
15 Assistant United States Attorney  
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16 Attorneys for Plaintiff  
17 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

In considering whether to grant the government leave to dismiss an indictment pursuant to Rule 48(a), the Ninth Circuit has instructed that:

Separation of power concerns generally require a district court to defer to the government's decision to seek dismissal of a criminal charge because a denial of the motion would represent an intrusion upon prosecutorial prerogative. [Citation omitted]. The decision to dismiss an indictment implicates concerns that the Executive is uniquely suited to evaluate, and a district court should be reluctant to deny its request.

United States v. Gonzalez, 58 F.3d 459, 462 (9th Cir. 1995). See also id. at 461 ("In light of the history and purpose of Rule 48(a), we have . . . required district judges entertaining such requests [for leave to dismiss] to grant considerable deference to the prosecutor"); id. ("the district court's discretion to deny leave is limited"); United States v. Garcia-Valenzuela, 232 F.3d 1003, 1007 (9th Cir. 2000) ("a district court is limited in its ability to second-guess the government's decisions on whether and what to prosecute"); United States v. Hayden, 860 F.2d 1483, 1487 (9th Cir. 1988) ("While the judiciary has been authorized to supervise prosecutorial decisions to dismiss, Rule 48(a) was not enacted for the purpose of usurping the traditional role of the prosecutor to determine whether to terminate a pending prosecution").

Publicly available information indicates that defendant is deceased. The death of defendant abates pending criminal proceedings. United States v. Rich, 603 F.3d 722, 724 (9th Cir.

2010); see also United States v. Oberlin, 718 F.2d 894, 895 (9th Cir. 1983). Accordingly, based on Rule 48(a) and the applicable law, the government respectfully requests leave to dismiss the pending Initial and First Superseding Indictments in this case without prejudice.

Dated: August 28, 2015 Respectfully submitted,

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